

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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GINA TITO,
on behalf of herself and
all others similarly situated,

Plaintiff

**REPLY DECLARATION OF
PETER T. LANE, ESQ.**

12-cv-3464

Hon. Joan Azrack

v.

RUBIN & ROTHMAN, LLC and
KEITH ROTHMAN, ESQ.

Defendants.
-----X

PETER T. LANE hereby declares, pursuant to 28 U.S.C. § 1746, that the following facts are truthful:

1. I am an attorney duly admitted to practice law in the State of New York and in the United States District Court for the Eastern and Southern Districts of New York.
2. My firm, Schlanger & Schlanger, LLP, along with co-counsel James B. Fishman, Esq. of Fishman & Mallon, LLP, is counsel for the Plaintiff Gina Tito and for the proposed class that she represents in the instant lawsuit.
3. I am fully familiar with the facts and matters stated herein, and submit this Declaration in further support of Plaintiff's motion for attorney's fees and costs.
4. Specifically, I write to respond to Defendants' accusation that I submitted false time entries in support of Plaintiff's motion for attorney's fees and costs.
5. The crux of Defendants' accusation is as follows: Defendants filed a pre-motion letter to dismiss the instant action (which they subsequently withdrew). At roughly the same time as

Defendants filed this pre-motion letter, Defendants filed a pre-motion letter for summary judgment in a separate case against Defendants titled Paz v. Rubin & Rothman, LLC, et al., 11-cv-9625 (S.D.N.Y.) in which my firm and James B. Fishman, Esq. also represent the plaintiff, and in which Mr. Arleo also represents the same defendants.

6. The two pre-motion letters raised similar arguments. Specifically, three of the four supposed grounds for summary judgment in Paz, were also supposed grounds for the motion to dismiss in Tito. Plaintiff filed pre-motion opposition letters in both cases.
7. I drafted the responses to both pre-motion letters. Because the arguments raised in the letters overlapped, the responses submitted also overlapped in terms of arguments addressed and authorities cited and discussed.
8. Defendants claim that because the two letter opposition briefs were similar “it is clear” that I double-billed by listing my time preparing the Paz opposition in the Tito fee petition, and vice versa. Defendants’ Memorandum in Opposition (“Opp.”) at 13.
9. Defendants even request, in their memorandum of law that this court order me “to appear and show cause why [I] should not be sanctioned for a clear attempt to double bill in regard to the fee petition submitted herein.” Id. at 14.
10. Defendants accusations are baseless.
11. I spent 4.9 hours with regard to the Tito pre-motion letter, not 9 hours as claimed in Defendants’ opposition. Opp. at 13. See time entries for September 10-14, 2012, attached as Exhibit 1 to the Declaration of Daniel A. Schlanger, Esq. in Support of Motion For Attorneys’ Fees and Costs, dated June 5, 2013. (ECF # 25-1).
12. In Paz, I submitted a total of 7.4 hours with regard to the Paz pre-motion letter. See time entries for September 10-14, 2012, Exhibit 5, attached to Reply Declaration of Daniel A.

Schlanger, Esq., dated July 23, 2013.

13. Thus, I spent a total of 12.3 hours reviewing the two pre-motion opposition letters, and researching, drafting and editing responses.

14. These hours reflect the actual amount of time I spent on each motion.

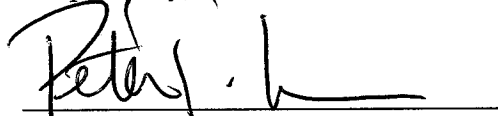
15. Where I spent blocks of time doing researching and drafting that was common to both letters, I split the time evenly between the two cases.

16. In short, the allegation that I submitted false time records is utterly and completely false.

17. I declare under the penalties of perjury that the foregoing Declaration is true and accurate to the best of my knowledge and belief.

DATED: July 23, 2013
New York, New York

Respectfully,

A handwritten signature in black ink, appearing to read "Peter T. Lane", is written over a horizontal line.

Peter T. Lane, Esq.
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